

REMARKS

This amendment is in response to the office action of June 12, 2009.

In the action, the examiner rejected claims 1 and 3-11 as unpatentable over Jecker in view of Barinaga and Javier. Initially it should be noted that the office action summary indicated that the action is non-final, while page 5 of the action includes a statement that the action is made final. Applicant is responding on the basis that the action is non-final, but includes an RCE if that is deemed to be required under the present ambiguous circumstances.

In the Response to Arguments portion of the action, the examiner admits that Jecker is silent as to how the valves are mounted. The examiner further states that there is no indication that the valves are not intended to be removed. The examiner's rejection of the claims on Jecker thus has no basis under 35 U.S.C. 103. For claims to be rejected, there must be a teaching of the limitations present in the claims. In this case, there is no teaching of the mouthpieces (17) being removable, as the examiner has in fact admitted. A review of Jecker (Figure 2) shows no reasonable way in which mouthpieces 17 could be inserted or removed. The bristle holder 14 is a unitary device which is removable from the handle by a screw thread arrangement. The bristles 15 are fixed in back 14 and the mouthpieces "extend from the passage 16", which extends down the center of back 14. There is no reasonable interpretation of Jecker that mouthpieces 17 are "insertable into and removable as a unit" from the cavity.

Further, the examiner again in the Response to Arguments section indicates that if the valves (mouthpieces) in the Jecker device were molded together using a rigid member, the connecting flange would still be considered flexible if flexible material would be applied over the rigid member. This statement is simply not true. A flexible covering cannot make an underlying, rigid member flexible. With two layers of material, the complete member will be rigid if one layer is rigid. Claim 1 has been amended to clarify but not limit the flexible flange member.

In view of the above, claim 1 is patentable over the combination of Jecker, Barinaga and Javier. Since claims 3-11 are dependant from claim 1, those claims are also allowable. Such action on the part of the examiner is now requested.

The commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account 14-1270.

Respectfully submitted,
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